

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY)	
)	
Annual formula rate update and revenue requirement)	Docket No. 15-0287
reconciliation under Section 16-108.5 of the)	
Public Utilities Act.)	

**STATEMENT OF POSITION AND DRAFT CONCLUSIONS OF
THE PEOPLE OF THE STATE OF ILLINOIS AND THE CITY OF CHICAGO**

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The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois (“AG” or “the People”), and the City of Chicago (the “City”), hereby file their Statement of Position and Draft Conclusions in the above-captioned proceeding, pursuant to Section 200.810 of the Rules of the Illinois Commerce Commission (“Commission” or “ICC”), 83 Ill. Admin. Code § 200.810, and the schedule set by the Administrative Law Judges.

The failure of AG/City to provide a statement of position and draft conclusion on any issue in the briefing outline should not be taken as agreement or disagreement with the position of Commonwealth Edison Company (“ComEd”) or of any other party on such issue.

I. INTRODUCTION / STATEMENT OF THE CASE

A. LEGAL STANDARD

B. PROCEDURAL HISTORY

II. OVERALL REVENUE REQUIREMENT

A. 2016 INITIAL RATE YEAR REVENUE REQUIREMENT

B. 2014 RECONCILIATION ADJUSTMENT

C. ROE COLLAR

D. 2016 RATE YEAR NET REVENUE REQUIREMENT

III. SCOPE OF PROCEEDING

- A. CHANGES TO THE STRUCTURE OR PROTOCOLS OF THE PERFORMANCE-BASED FORMULA RATE**
- B. THE DEFINITION OF RATE YEAR AND THE RECONCILIATION CYCLE**
- C. ORIGINAL COST FINDING**
- D. ISSUES PENDING ON APPEAL**

IV. RATE BASE

A. OVERVIEW

- 1. 2014 Reconciliation Rate Base
- 2. 2016 Initial Rate Year Rate Base

B. POTENTIALLY UNCONTESTED ISSUES

- 1. Plant in Service
 - a. Distribution Plant
 - b. General and Intangible Plant
- 2. Regulatory Assets and Liabilities
- 3. **Deferred Debits**

AG/City state that two issues relating to accumulated deferred income taxes for deferred debits are uncontested, and that the Commission should adopt the following language:

Draft Conclusion:

AG/City made two adjustment proposals concerning accumulated deferred income taxes ("ADIT") related to certain deferred debits, which ComEd accepted in rebuttal testimony. First, Mr. Effron proposed a reduction to rate base related to ADIT for "Stock Options: Other Equity Based Compensation," an ADIT item originally included in Account 190. Mr. Effron argued that the accrued

reserve for the Stock Options item is not reflected in ComEd's determination of the Company's rate base, so the related ADIT should be excluded, reducing rate base in each of the 2014 Reconciliation Year and 2016 Initial Rate Year by \$7.541 million. Second, Mr. Effron proposed a reduction to rate base related to Other Current Liabilities, based on certain miscellaneous accruals of liabilities that ComEd asserted should be included in the determination of its rate base. Mr. Effron argued that these accruals are not included in operating reserves or deferred credits or otherwise recognized in the determination of ComEd's rate base, so the related ADIT should be excluded, reducing rate base in each of the 2014 Reconciliation Year and 2016 Initial Rate Year by \$1.434 million. The Commission hereby adopts these uncontested adjustments.

4. Other Deferred Charges
5. Accumulated Provisions for Depreciation and Amortization
6. Accumulated Miscellaneous Operating Provisions
7. Asset Retirement Obligation
8. Customer Advances

AG/City state that their witness's proposed adjustment relating to the customer advances balance is uncontested, and that the Commission should adopt the following language:

Draft Conclusion:

AG/City witness Effron proposed reductions to the customer advances balance included in the determination of rate base by around \$5.178 million, including non-jurisdictional projects and projects not included in the reconciliation year rate base, because these advances represent non-investor-supplied funds that are available to the Company regardless of the particular projects to which such advances apply. ComEd agreed to a version of this proposal in its rebuttal testimony, keeping the 2016 Initial Rate Year rate base unchanged but reducing the 2014

Reconciliation Year rate base by \$5.178 million, and the Commission hereby adopts this uncontested adjustment.

- 9. Customer Deposits
- 10. Cash Working Capital
- 11. Construction Work in Progress

C. POTENTIALLY CONTESTED ISSUES

- 1. Accumulated Deferred Income Taxes
 - a. ADIT Related to Plant Additions
 - b. ADIT Related to Bad Debt**

According to AG/City witness Michael Brosch, deferred income taxes are an “accounting provision for the amounts of additional income taxes that are estimated to become receivable or payable in future periods, because of differences between book accounting and income tax accounting with respect to the timing of revenue or expense recognition.” AG/City show that Mr. Brosch explained that certain GAAP requires that book/tax timing differences be recognized by recording deferred tax expense or income, with the other ‘side’ of this entry creating accumulated deferred income taxes (“ADIT”) assets or liabilities.

Brosch testified that because utilities are such capital-intensive businesses, they generate large tax deductions and credits related to depreciation and tax deductions and credits; Brosch stated that these large deductions and credits must be normalized by creating ADIT assets and liabilities. He opined that because tax law allow utilities to claim deductions and credits that do not immediately flow through to ratepayers, only shareholders benefit from the deductions and credits, and thus to account for this zero-cost capital, regulators require that ADIT balances be deducted from rate base so that only the net amount of investor-supplied capital to support rate base assets earns a return that is recovered from ratepayers.

Mr. Brosch reviewed the more-than-100 ADIT balances the Company listed in its Exhibit 2.02 and found that while ComEd included ADIT balances that reduce its rate base by approximately \$3.1 billion, the utility did not include all of its ADIT balances as rate base offsets. Brosch took issue with ComEd's proposal to increase rate base by approximately \$18.5 million by including ADIT debit balances associated with bad debts or uncollectible accounts. Brosch explained that companies do not claim the tax deduction associated with an uncollectible account until the amount owed the utility is actually determined to be worthless; however, GAAP requires that bad debts be recognized on an accrual basis, well in advance of the time at which companies claim the associated tax deduction.

Mr. Brosch explained that utilities record on their books a "provision for bad debts" (amounts customers ultimately will not pay) on an estimated basis, as a charge to Account 904 "Uncollectible Accounts," with a corresponding credit to Account 144, "Accumulated Provision for Uncollectible Accounts – credit," as prescribed in the FERC Uniform System of Accounts. AG/City state that, according to Brosch, this Accumulated Provision credit account then serves as a valuation offset to the utility's Account 142 "Customer Accounts Receivable" balances, to include in the utility's balance sheet only the estimated realizable net value of Accounts Receivables, after consideration of expected uncollectible portion recorded therein. Brosch stated that the Account 144 provision for uncollectibles thus reduces the utility's reported assets; then, when any specific customer's account balance later becomes worthless and must be written off, the Account 142 value of the customer's account is reduced and the Account 144 Accumulated Provision balance is charged the same amount.

Mr. Brosch proposed removing ComEd's ADIT debit balance related to bad debts from rate base because the Company did not also include the corresponding Accumulated Provision

for Uncollectibles credit balance in Account 144 in rate base. Mr. Brosch concluded that it is fundamentally unfair to inflate rate base by including ADIT related to bad debts “when the associated accounting reserve balance arising from accrual-basis accounting for bad debts is not used to reduce rate base.” AG/City cite Brosch’s testimony that ADIT balances should follow the rate base treatment of the corresponding assets and liabilities. AG/City note that ComEd witness Brinkman did not respond to Brosch’s testimony that ADIT associated with bad debts should be removed from rate base because the Company has not included in rate base “the corresponding credit ‘reserve’ for uncollectibles, appearing within Account 144.”

AG/City argue that its position in this case is consistent with the AG’s position in Docket No. 11-0721, contrary to allegations of ComEd witness Brinkman. In Docket No. 11-0721, ComEd proposed to include 100% of ADIT related to bad debt in rate base. AG/AARP witness David J. Effron testified that ComEd’s proposal was improper because “[l]ess than 100 percent of bad debt expense is allocated to the jurisdictional revenue requirement, and less than 100% of the ADIT on the Accumulated Provision for bad debt should be allocated to the jurisdictional rate base.” AG/City note that the Commission agreed with Mr. Effron’s proposal, permitting only a portion of ADIT related to bad debts in rate base, and finding that finding that ComEd presented “no facts establishing that 100% of ADIT that is related to bad debt expense should be allocated to distribution services.” Order, May 29, 2012, Docket No. 11-0721 at 62. AG/City state that the prior decision confirmed a relationship between jurisdictional bad debts expense and the related ADIT, without making any determination regarding the need to consistently either include or exclude the offsetting balance sheet (ADIT/asset and Accumulated Provision for bad debts/liability) accounts in rate base determinations. AG/City now propose to remove

the *remaining* portion of the ADIT related to bad debts that was not previously excluded in Docket No. 11-0721.

AG/City note that Mr. Effron's testimony in the prior case focused on whether, as ComEd recommended, 100% of bad debt expense and ADIT balances should be allocated to distribution services. AG/City show that Effron did not present testimony in Docket No. 11-0721 regarding ComEd's Cash Working Capital lead-lag study, nor was he familiar with whether ComEd's Accounts Receivables or the corresponding offset for Accumulated Provision for Uncollectibles were included in rate base. AG/City state that rather, Mr. Brosch testified regarding the accounting treatment of bad debt in that prior case and as Mr. Brosch noted, had his position in Docket No. 11-0721 been adopted, ComEd's Accumulated Provision for Uncollectibles would have been considered in determining the utility's rate base, which is exactly the matching of ADIT with the associated asset/liability balances that Mr. Brosch is proposing in this case.

Mr. Brosch explained that in the earlier case, he recommended that ComEd's uncollectibles be accounted for in the Company's lead-lag study, which would have had the same effect as his proposal in this case – ComEd's uncollectibles would be accounted for in determining the utility's rate base. AG/City argue that the Commission erroneously rejected Mr. Brosch's proposal in Docket No. 11-0721. Order, May 29, 2012, Docket No. 11-0721, at 41; as a result, the Company's Accumulated Provision for Uncollectibles balance was not accounted for in the rate base established in that proceeding. AG/City further argue that ComEd's proposal in this case would perpetuate the error made in the prior case – ComEd's rate base would not be adjusted to recognize in rate base the Accumulated Provision for Uncollectibles.

As Mr. Brosch stated, the Commission now has an opportunity to correct its mistake from Docket No. 11-0721 by recognizing that its Final Order in Docket No. 11-0721 did not include in rate base the credit balance Account 144, the Accumulated Provision for Uncollectibles to reduce cash working capital and, therefore, the rate base should not include the related ADIT balance. AG/City note that on cross-examination, Ms. Brinkman admitted that in her testimony in ComEd's last formula rate update case, Docket No. 14-0312, she supported the accounting principle that Mr. Brosch advocates here: she testified there that if ADIT related to the reconciliation balance is included in rate base, then the related asset or liability should also be included in rate base. AG/City argue that this "matching" or "following" is precisely what Mr. Brosch recommends in this case; if, as ComEd recommends, ADIT debit balance related to bad debt is included in rate base, then the related asset or liability – in this instance, the Account 144 Accumulated Provision for Uncollectibles credit balance – must also be included in rate base. AG/City state that alternatively, the Commission can reject ComEd's proposal to include ADIT related to bad debt in rate base; then it becomes unnecessary to include the Account 144 Accumulated Provision for Uncollectibles credit balance in rate base.

AG/City also state that, while ComEd also argues that the Company has effectively pre-paid the taxes on collection and that ComEd will not receive the corresponding tax benefit until later, relying on surrebuttal statements by Ms. Brinkman that AG/City witnesses had no opportunity to counter, the timing of cash flows that ComEd now relies upon is normally examined and accounted for within cash working capital studies, and ComEd has consistently declined to do so. Moreover, note AG/City, the argument is inconsistent with ComEd's consistent denial of a relationship to cash flow accounting; at ComEd's urging, the Commission ruled in Docket No. 11-0721 that the timing of uncollectible collections and the corresponding

Account 144 Accumulated Provision for Uncollectibles liability account should *not* be considered within lead-lag studies. Finally, argue AG/City, this particular cash flow argument is raised outside the context of ComEd's lead-lag study, which does not account for the alleged effect ComEd relies upon.

ComEd also argues that "Mr. Brosch's theory that considering bad debts within lead lag studies would lead to a decrease in the collection lag is based on the false assumption that there is no revenue collections lag with uncollectibles." AG/City argue that as with the "pre-paid the taxes" argument, this point may resonate within a lead-lag study discussion of cash flow timing, but has no home in this docket because AG/City's argument in this case is not premised on the treatment of cash working capital matters that were decided in Docket No. 11-0721.

AG/City note certain highly relevant facts admitted by ComEd witness Brinkman that support Commission adoption of the AG/City position that ADIT related to bad debts be excluded from rate base when the matching offset is excluded:

1. ComEd does not make a simple inclusion in rate base for the accumulated provision for Uncollectibles in Account 144 in its formula rate template. Tr. at 51:8-9.
2. Ms. Brinkman believes that Account 144 has not been included directly in rate base because, "that account should be considered in the cash working capital calculation – within the cash working capital calculation collection lag." Tr. at 51:11-14.
3. Consistent with its winning argument in Docket No. 11-0721, ComEd has not accounted for the Accumulated Provision for Uncollectibles liability in its lead-lag study.

In summary, AG/City argue that the Commission should adopt their proposal, which would reduce rate base in each of the 2014 Reconciliation Year and the 2016 Initial Rate Year by \$18.5 million.

Draft Conclusion:

Having reviewed the available evidence, the Commission adopts the proposal made by AG/City witness Brosch to exclude the ADIT related to bad debt accruals from the Company's rate base. The Commission acknowledges that in Docket No. 11-0721, it directed that ComEd's Accumulated Provision for Uncollectibles credit balance in Account 144 be excluded from the determination of ComEd's rate base. Thus, because inclusion of the ADIT item would violate the principle of matching rate base items with associated ADIT, prudent regulatory practice makes it not reasonable to also include the related ADIT item in ComEd's rate base.

2. Materials & Supplies

V. OPERATING EXPENSES

A. OVERVIEW

B. POTENTIALLY UNCONTESTED ISSUES

1. Distribution O&M Expenses
2. Customer-Related O&M Expenses
3. Uncollectibles Expense
4. Administrative and General Expenses
5. Charitable Contributions
6. **Merger Expense**

AG/City note that on April 14, 2014, Exelon Corporation (ComEd's parent company, "Exelon") and Pepco Holdings, Inc. ("Pepco") signed an agreement and plan of merger to combine the two companies (the "Proposed Merger") and that in the year 2014, a total of approximately \$3.84 million in Illinois-jurisdictional Proposed Merger integration costs were either incurred by ComEd or allocated from Exelon to ComEd. AG/City state that in this proceeding, ComEd has included (a) approximately \$4.42 million of Proposed Merger

integration costs in the 2014 Reconciliation Year revenue requirement (including interest on the 2014 reconciliation balance, pursuant to 220 ILCS 5/16-108.5(d)(1)) and (b) approximately \$3.84 million of Proposed Merger integration costs in the 2016 Initial Rate Year revenue requirement. AG/City propose conditionally disallowing recovery of the 2014 merger integration costs from this proceeding, as outlined further below.

AG/City note that Exelon and Pepco already obtained required regulatory approval from the Federal Energy Regulatory Commission (“FERC”) and the utility commissions of Virginia, New Jersey, Maryland, and Delaware. However, they note that on August 25, 2015, the District of Columbia Public Service Commission (the “DC Commission”) voted 3-0 to deny approval of the Proposed Merger under applicable statutory authority in that jurisdiction.

AG/City observe that in the Commission’s final order in Docket No. 12-0321, the Commission found that where costs are incurred for the purpose of realizing post-merger savings, the costs are recoverable where, *inter alia*, net savings are “reasonably likely to occur” and where ComEd customers are “allocated savings that are reasonably proportional to the risks they face.” Order, Docket No. 12-0321, December 19, 2012, at 79. AG/City note that their witness Michael Brosch observed in his Supplemental Direct Testimony that “if the merger is not consummated, there can be no merger-enabled cost savings benefits to ComEd’s ratepayers in Illinois and, therefore, the costs incurred in connection with the merger should not be charged to Illinois ratepayers.” AG/City further note that ComEd admitted in a discovery response that obtaining regulatory approval for the Proposed Merger and consummating it is required to secure the associated cost savings.

As AG/City report, their expert witness, Mr. Brosch, concluded in supplemental testimony that, as of August 26, 2015, consummation of the Proposed Merger is not reasonably

likely, because of (1) the DC Commission's August 25, 2015 decision; (2) press reporting of DC Commission board member Betty Anne Kane's oral comment on August 25 stating that "this decision is forever" and indicating that it wasn't enough for the companies to prove that the public wouldn't be harmed by the deal; they had to prove the public would be helped; and (3) the statutory standard (D.C. Code § 34-606) in D.C. that creates a standard of deference to DC Commission factual findings on appellate review in the District of Columbia Court of Appeals. AG/City further note that in direct examination at the evidentiary hearing held August 27, 2015 in this case, ComEd witness Brinkman stated that she had no knowledge of whether the DC Commission would reverse its decision pursuant to a reconsideration request also presented no other new evidence to establish as of that date that DC Commission approval of the Proposed Merger was likely. Because the record was marked heard and taken at the conclusion of the evidentiary hearing, AG/City take the position that the evidentiary record, including Mr. Brosch's testimony and Ms. Brinkman's statements, indicates that approval of the Proposed Merger is not likely.

Notwithstanding that, in the interest of simplifying issues, AG/City agree to a proposal made by ComEd witness Brinkman during supplemental oral direct examination at the evidentiary hearing: if the proposed merger of Exelon Corporation ("Exelon") and Pepco Holdings, Inc. ("Pepco") has not closed by December 1, 2015, ComEd will voluntarily withdraw its request to recover 2014 Exelon / Pepco merger related costs. However, AG/City propose some additional terms to make the proposal actionable by the Commission in a way that assures recovery of only appropriate costs:

First, AG/City urge that the Commission's Order must state expressly the alternative revenue requirement amounts, the determinative conditions that must exist on December 1, 2015, and the process for determining resulting rates pursuant to the Order.

Second, AG/City suggest that the term "closed" should mean that all actions and conditions contemplated in Articles I, II, III, IV, and VII of the Agreement and Plan of Merger among Pepco, Exelon, and Purple Acquisition Corp. dated April 29, 2014 as required for the "Closing" (as defined in Section 1.2 of that agreement) shall have occurred.

Third, AG/City propose that the Company should submit a certification by December 2, 2015 in this proceeding stating whether the Proposed Merger closed by 11:59 PM CST on December 1, 2015, and providing supporting documentation (in the form of a Form 8-K filed with the U.S. Securities and Exchange Commission certifying the closing of the merger) if the Proposed Merger did in fact close by 11:59 PM CST on December 1st. AG/City further request that the Commission take administrative notice of such a certification from ComEd, pursuant to Section 200.640(a)(7) of the Commission's Rules.

The People and the City propose, as they did in their Initial Brief, that if ComEd does not submit such evidence on or before December 2, 2015, the Commission should, consistent with Ms. Brinkman's proposal and its appropriate Order (described above), disallow recovery in this proceeding of the 2014 integration costs associated with the Proposed Merger.

Draft Conclusion:

The Commission notes that AG, the City, and ComEd are all in agreement that the Commission should allow recovery of the 2014 integration costs for the Exelon/Pepco proposed merger if – and only if – the merger closed by December 1, 2015. This arrangement can be adopted by

the Commission only if consistent with the Commission's prior decisions on merger cost recovery, which required that cost savings from a merger be reasonably likely in order to make the related merger integration costs recoverable, and that customers be allocated savings reasonably proportional to the risks they face. See Order, Docket No. 12-0321, December 19, 2012, at 79. The Commission cannot approve recovery of the 2014 merger integration costs if consummation of the proposed merger, and thus realization of the related net savings, appears not reasonably likely.

Lack of approval of the merger by December 1, 2015 could mean that either: (1) Exelon and Pepco did not apply to the DC Public Service Commission within 30 days – by September 86, 2015 – for reconsideration; or (2) Exelon and Pepco timely applied to the DC Commission for reconsideration, but the DC Commission denied the request by late October of 2015, within 60 days after the original denial, and Exelon and Pepco then appealed to the DC Court of Appeals and the appeal was pending as of December 1, 2015; or (3) the DC Commission denied a timely reconsideration request, and Exelon and Pepco then appealed to the DC Court of Appeal, which affirmed the DC Commission's decision by December 1, 2015; or (4) the DC Commission denied a reconsideration request and then Exelon and Pepco did not file an appeal in the DC Court of Appeals as of December 1, 2015 (although they would have 60 days from the DC Commission's denial of reconsideration in late October to file an appeal, pursuant to D.C. Code § 34-605). The Commission finds, based on the evidence in the record, that under the first and third scenarios, approval of the merger would be impossible; and under the second and fourth scenarios, approval of the merger would be not reasonably likely because of the statutory standard in D.C. that creates a standard of deference to DC Commission factual findings on appellate review (D.C. Code § 34-606). On the other hand, if the merger closed by December 1, 2015, then, according to evidence in the record, net cost savings are likely to be achieved.

Thus, the Commission finds that the test for cost recovery agreed to by AG/City and ComEd correctly applies the Commission's standard for recovery of merger integration costs.

The Commission will allow recovery of the 2014 Exelon/Pepco integration costs, which contribute approximately \$4.4 million (including interest on the reconciliation balance) to the 2014 Reconciliation Year revenue requirement and approximately \$3.8 million to the 2016 Initial Rate Year revenue requirement, if and only if it has received a certification from ComEd on e-Docket by December 2, 2015 stating that the Exelon/Pepco merger "closed" (as defined in Section 1.2 of Exelon/Pepco's merger agreement dated April 29, 2014) by December 1, 2015. The certification must be accompanied by some definitive documentation, such as a Form 8-K filed with the U.S. Securities and Exchange Commission, that is capable of being administratively noticed pursuant to Section 200.640(a)(7) of the Commission's Rules, 83 Ill. Admin. Code § 200.640(a)(7).

Furthermore, because ComEd (**did / did not**) file such certification on e-Docket by December 2, 2015, which (**filing / omission**) the Commission hereby takes administrative notice of under Section 200.640(a)(7) of the Commission's Rules, recovery of the 2014 merger integration costs (**is / is not**) allowed, because the evidence shows that (**approval of the merger makes the realization of net savings reasonably likely / lack of approval of the merger makes the realization of net savings not reasonably likely**).

7. Charges for Services Provided by BSC
8. Regulatory Commission Expense (Rock Island Clean Line)
9. Depreciation and Amortization Expense
10. Taxes
11. Lobbying Expense

12. Rate Case Expenses
13. Corporate Credit Cards (Employee Recognition)
14. Long Term Incentive Compensation Program Expenses
15. Key manager Long Term Performance Plan (“LTPP”)
16. Long Term Performance Cash Awards Program (“LTPCAP”)
17. Gross Revenue Conversion Factor

C. POTENTIALLY CONTESTED ISSUES

1. Short Term Incentive Compensation Program Expenses
 - a. Annual Incentive Program (“AIP”)
 - b. Derivative Adjustments
2. Employee Savings Plan
3. Outside Services
4. Industry Association Dues

VI. RATE OF RETURN

VII. RECONCILIATION

A. OVERVIEW

B. POTENTIALLY CONTESTED ISSUES

1. Calculation of Interest on Reconciliation Balance

VIII. REVENUES

IX. COST OF SERVICE AND RATE DESIGN

X. OTHER

XI. CONCLUSION

September 21, 2015

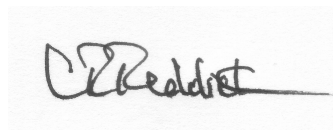
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